IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 94

UNITED STATES OF AMERICA,
Petitioner,

vs.

HAROLD T. LINDSAY, *ET AL.*

BRIEF FOR RESPONDENTS

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SUBJECT INDEX.

Table of Cases.

III.

Statutes.

Miscellaneous.

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Opinions Below

The opinion of the United States District Court for the District of Massachusetts (R. 28-30) is reported at 105 F. Supp. 667. The opinion of the Court of Appeals (R. 33-36) is reported at 202 F. 2nd. 293.

Jurisdiction

The judgment of the Court of Appeals was entered on February 26, 1953 (R. 36). The petition for a writ of certiorari was filed on May 26, 1953, and granted on October 12, 1953 (R. 39). The jurisdiction of this Court was invoked under 28 U. S. C. 1254 (1).

Statement of the Case

The judgment of the District Court, affirmed by the Court of Appeals, was founded upon motions to dismiss the action upon various grounds, among them "that the right of action set forth in the complaint did not accrue within six years next before the commencement of this action" (R. 26-28). The Courts below based their decisions solely on that ground, and did not consider the other objections to the complaint.

The action was by the United States on a claim of Commodity Credit Corporation, hereinafter called the Corporation, created by the Commodity Credit Corporation Charter Act, 15 U. S. C. Supp. 714. The claim was originally one belonging to Commodity Credit Corporation, a Delaware corporation of the same name, hereinafter called Commodity, to which the Corporation succeeded pursuant to the terms of the Act by which it was created.

The purpose of the action was to recover "for damage to wool owned by Commodity and stored in the Draper and Company warehouse" (R. 2). The damage is alleged to have occurred not later than February 26, 1945 (R. 3-4).

The complaint was in two counts. The first count claims damages from the defendant Harold T. Lindsay, hereinafter called the Handler, and his sureties. The second count claims the same damages from Draper & Company, Inc., hereinafter called the Warehouseman.

The complaint alleges that the Handler entered into a Wool Handler's Agreement, a copy of which was annexed, with Commodity to purchase, handle, store, and sell domestic wool for the account of Commodity. Pertinent provisions of the Agreement with respect to the Handler's obligation to store wool are as follows (R. 15-16):

"STORAGE OF WOOL.

"15. *General.* The Handler shall, subject to the right of Commodity to direct where the wool shall be stored, provide proper storage, upon the terms and conditions hereinafter specified, for the wool received by the Handler for purchase hereunder and shall take such action as may be necessary to keep such wool in good condition * * * Notwithstanding any other provision hereof, Commodity shall have the right at any time it determines the wool is improperly stored hereunder to require any such wool to be rewarehoused at the Handler's expense in such facilities as Commodity may specify.

* * * * *

"(b) *Warehouse Insurance.* The Handler shall not, unless otherwise indicated in the space below, be obligated to insure the wool received hereunder after it is placed in the warehouse, and, unless the Handler is obligated to insure the wool, Commodity shall indemnify and save the Handler or producer, pool, or secondary handler from which such wool was received harmless from any loss of or damage to the wool after it is placed in the warehouse or from any claim made against the Handler on account of such loss or damage provided such loss or damage does not result from the failure of the Handler or his agents to use due care in regard to the wool."

Paragraph X of the First Count alleges, in part (R. 3):

"Pursuant to the Wool Handler's Agreement aforesaid, the defendant handler held in its custody wool acquired and stored for the account of Commodity. When acquired the wool was in a good and undamaged condition. Under the terms of the Wool Handler's

Agreement aforesaid, the defendant handler was obligated to provide proper storage for the wool and to take such action as necessary to keep the wool in good condition. In violation of said Wool Handler's Agreement on or about February 26, 1945, 17,245 pounds of said domestic wool in grease were returned to Commodity in a wet and damaged condition. The damages to said wool were caused by the failure of the defendant handler to perform his obligations under the terms of the contract, as amended, to provide proper storage for the wool and to take such action as might be necessary to keep the wool in good condition."

There is no other allegation of any violation of duty by the Handler.

Paragraph II of the Second Count alleges (R. 4):

"During 1944, various quantities of wool belonging to Commodity were delivered for storage to the defendant, Draper and Company, Inc. by the wool handler, Harold T. Lindsey. When delivered to the defendant, Draper and Company, Inc., the wool was in a good and undamaged condition. On or about February 26, 1945, 17,245 pounds of the wool were returned to Commodity in a wet and damaged condition."

There is no other allegation of any violation of duty by the Warehouseman.

The motions to dismiss by the Handler and its sureties were on the following grounds (R. 26-28):

"1. Because the complaint fails to state a claim against defendant upon which relief can be granted;

"2. Because the complaint discloses that the wool was stored under a written agreement between Commodity and this defendant that Commodity would

indemnify and save this defendant harmless from any loss or damage to the wool or from any claim made against the Handler on account of such loss or damage provided such loss or damage does not result from the failure of this defendant or his agents to use due care in regard to the wool.

"2. Because the complaint discloses that the right of action set forth in the complaint did not accrue within six years next before the commencement of this action."

The motion to dismiss by the Warehouseman was on the following grounds (R. 27):

"1. Because the complaint fails to state a claim against the defendant upon which relief can be granted;

"2. Because the complaint does not allege that any loss or injury to the wool was caused by this defendant's failure to exercise such care in regard to the wool as a reasonably careful owner of similar goods would exercise.

"3. Because the complaint discloses that the right of action set forth in the complaint did not accrue within six years next before the commencement of this action."

We assume that in this Court all the objections to the complaint may be urged, and that the question is whether the judgment was correct.

J. E. Riley Investment Company vs. Commissioner of Internal Revenue, 311 U. S. 55, 59;

Montana-Dakota Util. Co. v. Northwestern P. S. C., 341 U. S. 246, 250.

Sanderson vs. Portal Life Insurance Co., 72 F. 2nd 894, 896.

The Statute Involved

Section 4 (c) of the Commodity Credit Corporation Charter Act of June 29, 1948, c. 704, 62 Stat. 1070, as amended June 7, 1949, c. 175, #5, 15 U. S. C. A. sec. 714 b(c), provides, in part:

"No suit by or against the Corporation shall be allowed unless (1) it shall have been brought within six years after the right accrued on which suit is brought, or (2) in the event that the person bringing such suit shall have been under legal disability or beyond the seas at the time the right accrued, the suit shall have been brought within three years after the disability shall have ceased or within six years after the right accrued on which suit is brought, whichever period is longer. The defendant in any suit by or against the Corporation may plead, by way of set-off or counterclaim, any cause of action, whether arising out of the same transaction or not, which would otherwise be barred by such limitation if the claim upon which the defendant's cause of action is based had not been barred prior to the date that the plaintiff's cause of action arose: *Provided*, That the defendant shall not be awarded a judgment on any such set-off or counterclaim for any amount in excess of the amount of the plaintiff's claim established in the suit * * * Any suit by or against the United States as the real party in interest based upon any claim by or against the Corporation shall be subject to the provisions of this subsection (c) of this section to the same extent as though such suit were by or against the Corporation, * * *"

Section 16 of the Act, 62 Stat. 705, 15 U. S. C. A. sec. 714n, provides:

"The assets, funds, property, and records of Commodity Credit Corporation, a Delaware corporation,

are transferred to the Corporation. The rights, privileges, and powers, and the duties and liabilities of Commodity Credit Corporation, a Delaware corporation, in respect to any contract, agreement, loan, account, or other obligation shall become the rights, privileges, and powers, and the duties and liabilities, respectively, of the Corporation. The enforceable claims of or against Commodity Credit Corporation, a Delaware corporation, shall become the claims of or against, and may be enforced by or against, the Corporation: *Provided*, That nothing in this Act shall limit or extend any period of limitation otherwise applicable to such claims against the Corporation."

Summary of Argument

The Statute bars this suit brought on February 29, 1952, on a cause of action accruing not later than February 26, 1945. The natural and literal meaning of its words is to bar suits on rights accrued before the passage of the Act as well as thereafter. There are no constitutional objections to giving the language its natural effect. The public policy which dictated limitations on the enforcement by suit of rights of the Corporation is applicable to causes arising before the enactment as well as after it. The proviso in section 16, 15 U. S. C. A. 714n, that nothing in the other provisions of the Act "shall limit or extend any period of limitation otherwise applicable to such claims *against* the Corporation" (italics ours) indicates that Congress intended that the enforcement of claims of Commodity *by* the Corporation should be so limited or extended. The legislative history of the Act also leads to that conclusion.

In any event no cause of action is stated in the complaint against any of the respondents since it is not alleged

that either the Handler or the Warehouseman was negligent.

Argument

1. THE STATUTE OF LIMITATIONS IS A BAR.

The words: "No suit by or against the Corporation shall be allowed unless (1) it shall have been brought within six years after the right accrued on which suit is brought", if given their natural and literal meaning, are as applicable to rights accrued before the enactment as to those arising thereafter.

This Court at its last term decided that an action by the United States to recover for violations of the Walsh-Healey Act during the years 1942-1945 was barred by the provision in Section 6 of the Portal-to-Portal Act of 1947 that "every such action shall be forever barred unless commenced within two years after the cause of action accrued."

Unexcelled Chemical Corporation vs. United States, 345 U. S. 59.

Indeed, the petitioner relies upon *Sohn v. Waterson*, 17 Wall. 596, and the cases which follow it, and quotes in its brief, at page 16, from the opinion in that case:

> "When a statute declares generally that no action, or no action of a certain class shall be brought, except within a certain limited time after it shall have accrued, the language of the statute would make it apply to past actions as well as to those arising in the future."

We suppose, therefore, that the petitioner does not contend that the Statute here involved is inapplicable, but only that the period of limitations in this case runs

not from the date when the right accrued on which suit is brought, but from the effective date of the Statute. It is not urged, however, that with respect to causes of action created after the passage of the Act the word "accrued" should be given any meaning other than its normal one of "arose." Petitioner's brief concedes (p. 12) that "'accrued', as applied to after-arising claims, undoubtedly is equated with the time the causes come into existence." What the petitioner asks the Court to do is to read the Act as if it described the period of limitations as: "six years after the right accrued on which suit is brought, or, except with respect to claims against the Corporation to which some other period of limitation is applicable, six years after the passage of the Act, if the right arose prior thereto." It is, of course, necessary to introduce the exception into the second alternative because of the express provision in Section 16 of the Act "That nothing in this Act shall limit or extend any period of limitation otherwise applicable to such claims against the Corporation."

But the words of a statute are to be read in their natural and ordinary sense unless some strong reason appears to the contrary.

Miller v. Robertson, 266 U. S. 243, 250;
Old Colony Trust Co. v. Commissioner, 301 U. S. 379, 383.

There is no reason, such as appeared in *Soho v. Waterson, supra*, and other cases cited by the petitioner, for adopting a strained construction of the plain language of the Act.

In that case, the statute required that an action be brought "within two years next after the cause or right of such action shall have accrued." The plaintiff contended that

it could not apply to the suit in question, because the cause of action had accrued more than two years prior to the passage of the Act, so that the Act would cut off and defeat the right altogether and thus impair the obligation of contracts. The Court said earlier in its opinion:

> "A literal interpretation of the statute would have this effect."

And, again, in language also quoted in petitioner's brief (p. 16):

> "But if an action accrued more than the limited time before the statute was passed a literal interpretation of the statute would have the effect of absolutely barring such action at once. It will be presumed that such was not the intent of the Legislature. Such an intent would be unconstitutional. To avoid such a result, and to give the statute a construction that will enable it to stand, courts have given it a prospective operation. In doing this, three different modes have been adopted by different courts. One is to make the statute apply only to causes of action arising after its passage. But as this construction leaves all actions existing at the passage of the Act without any limitation at all (which, it is presumed, could not have been intended), another rule adopted is, to construe the statute as applying to such existing actions only as have already run out a portion of the statutory time, but which still have a reasonable time left for prosecution before the statutory time expires—which reasonable time is to be estimated by the court—leaving all other actions accruing prior to the statute unaffected by it. The latter rules does not seem to be founded on any better principle than the former. It still leaves a large class of actions entirely unprovided with any limitation whatever, or, as to

them, is unconstitutional, and is a more arbitrary rule than the first."

The Court, therefore, adopted a third construction, that of the trial court, by which the statute was held applicable not only to future causes of action but also to those already accrued, but the period of limitations was deemed to run with respect to the latter only from the date of the passage of the Act.

Sohn v. Waterson has been frequently cited and followed in the federal courts. The respondents do not question its authority as a precedent.

But this case does not require that the words "within six years after the right accrued" be construed any differently with respect to rights existing before the date of the Act than to those arising thereafter. No constitutional question is involved. The United States could constitutionally release any claims of Commodity or impose such limitations upon their enforcement as it pleased, as petitioner's brief concedes (p. 21).

Superior Engraving Co. v. National Labor Rel. Board, 183 F. 2nd 783, 790 (C.A.-7).

Footnote 1. "It might also be observed that the rule of construction established by such cases as *Sohn v. Waterson* is applicable only to limitation statutes affecting private as distinguished from public rights, and that the National Labor Relations Act creates no private, vested rights, but only public rights which are at all times subject to the control of the legislature."

It is, however, urged by the petitioner (Brief pp. 22-23) that section 4(c) applies equally to suits "by or against the Corporation"; that it is at least doubtful whether Congress could create a bar of limitations applicable to suits against

the Corporation if the prescribed period commenced, before the passage of the Act, when the right of action arose, so that the rule of *Sohn v. Waterson, supra*, should be applied to suits against the Corporation; and that there is nothing in the Act to justify treating suits by the Corporation differently from those against the Corporation.

This argument seems clearly unsound. In the first place, when Congress created the Corporation it did not have to impose a liability on it for claims against Commodity. Nor did it need to provide that the Corporation could be sued. If suit were permitted, the consent to sue might be withdrawn at any time.

Lynch v. United States, 292 U. S. 571, 581.

"Although consent to sue was thus given when the policy issued, Congress retained power to withdraw the consent at any time. For consent to sue the United States is a privilege accorded; not the grant of a property right protected by the Fifth Amendment. The consent may be withdrawn, although given after much deliberation and for a pecuniary consideration."

Cummings v. Deutsche Bank, 300 U. S. 115, 119.

"The consent of the United States to be sued was revocable at any time."

We assume that there is no dispute as to the power of the United States to grant its corporate agencies immunity from suit, even though there is no presumption of such immunity.

Reconstruction Finance Corp. vs. J. G. Menihan Corp., 312 U. S. 81.

Federal Housing Administration v. Burr, 309 U. S. 242.

Keifer vs. Reconstruction Finance Corp., 306 U. S. 81.

Since Congress might have granted the Corporation complete immunity from suits against it for liabilities of Commodity, we see no constitutional difficulty in granting it partial immunity, that is, after the expiration of six years from the date when the right of action accrued.

In the second place, the Act does expressly provide in Section 16 that suits by the Corporation be treated differently from those against the Corporation on liabilities of a Commodity. It keeps in force state statutes of limitations applicable to suits against the Corporation to enforce liabilities of Commodity. The United States, and its agencies, are entitled to take the benefit of such statutes.

Stanley v. Schwalby, 147 U. S. 508.
Stanley v. Schwalby, 162 U. S. 255.

Since the Act does not limit or extend the periods of limitation prescribed by state statutes with respect to claims against the Corporation accruing prior to the passage of the Act, no constitutional question could arise except in a case to which no state statute was applicable. The possibility of such a case seems to us too remote to require it to be considered. It could only arise in a suit brought more than six years after the right accrued. As the Court of Appeals said in its opinion (R. 36):

> "It will suffice to say that we see no reason to give the statutory language a strained construction in the situation before us merely because on the authorities perhaps we might have to give it a strained construction to save its constitutionality in a situation the converse of the one under consideration."

All of the cases cited by the petitioner on page 14 of its brief as holding that, with respect to claims arising prior to the enactment of a Statute of Limitations, the period begins to run from its effective date, were suits to enforce private

rights and not those of the United States, and are distinguishable if for that reason alone. It seems unnecessary to consider other distinctions.

Field Packing Company v. United States, 197 F. 2nd 329, a *per curiam* opinion, apparently supports the petitioner's position. It is not clear, however, from the opinion whether the Court concluded that the statute of limitations in section 4c of the Act was applicable at all to causes of action existing at its passage, or whether it applied the rule of *Sohn v. Waterson*. It cited that case, but also cited *United States v. St. Louis, S. F. & T. R. Co.*, 270 U. S. 1, in which an amendment to a federal statute of limitations shortening the period was held not applicable in any manner to existing causes of action. In fact, the record in the Field Packing Company case, and the briefs, though not the opinion, disclose that the question decided was not that involved in this case. The contentions actually made there in behalf of the defendant were that the suit was barred by the expiration of the four-year period prescribed in the original Act before the amendment effected by the Act of June 7, 1949, extending the period to six years, and that Congress could not constitutionally remove the bar. It was assumed by counsel for the defendant, without supporting argument, that the period began to run when the right arose. The decision appears to have been correct on its facts. The extension of the period of limitations did not violate the defendant's constitutional rights.

Chase Securities Corp. v. Donaldson, 325 U. S. 303, 316.

The unreported opinions in the District Court cases, *United States v. H. Bowden*, and *United States v. Rabinoff*, copies of which are printed as an appendix to petitioner's brief, appear to support its position. We do not know how

much benefit the District Courts derived from argument for the defendants in those cases.

In addition to the argument based on constitutional grounds the petitioner suggests that considerations of fairness and equity require that a newly imposed statute of limitations be construed as applying only prospectively and that the legislative history of the Act indicates an intent that section 4c should be so construed.

The respondents see no reasons based on fairness and equity for giving the words of the Act a meaning other than their natural and literal one. The public policy which dictated limitations on the enforcement by suit of rights of the Corporation is as applicable to those arising before the passage of the Act as to those thereafter. It is in the public interest that stale claims should not be litigated.

Chase Securities Corp. v. Donaldson, 325 U. S. 303, 314.

"Statutes of limitation find their justification in necessity and convenience rather than in logic. They represent expedients, rather than principles. They are practical and pragmatic devices to spare the courts from litigation of stale claims, and the citizen from being put to his defense after memories have faded, witnesses have died or disappeared, and evidence has been lost."

Guaranty Trust Co. of N. Y. vs. United States, 304 U. S. 126, 136.

"The statute of limitations is a statute of repose, designed to protect the citizens from stale and vexatious claims, and to make an end to the possibility of litigation after the lapse of a reasonable time. It has long been regarded by this Court and by the courts of New York as a meritorious defense, in itself serving a public interest."

Wilson vs. Iseminger, 185 U. S. 55, 60.

"The theory of this remedial act is that upon which all statutes of limitation are based,—a presumption that, after a long lapse of time, without assertion, a claim, whether for money or for an interest in land, is presumed to have been paid or released. This is a rule of convenience and policy, the result of a necessary regard to the peace and security of society."

Certainly the public policy, upon which a statute of limitations is founded, is not served by drawing a distinction between causes of action accruing prior to its passage and those arising thereafter, and allowing the former a longer period within which they may be prosecuted. Such a distinction would be warranted ordinarily only for constitutional reasons, which do not exist in this case. However, if Congress had desired to draw such a distinction, it had the power to do so. Its failure to make it creates a presumption that it intended none.

The Fred Smartley, Jr., 108 F. 2nd 603, 608 (CCA-4).

"We do not think that such a construction of the statute amounts to giving it a retroactive effect. . . . The fact that such rights may have accrued prior to the passage of the statute does not give to the owner, as a matter of right, an unlimited time within which to assert them; and there is just as much reason why Congress should apply a time limitation upon their assertion as upon the assertion of rights subsequently accruing. Under such circumstances the fact that Congress made no exception with respect to existing rights raises a strong presumption that it intended to make none."

Wrightman vs. Boone County, 88 F. 435, 436 (CCA-8).

"It provides that no *scire facias* shall issue to revive any judgment except within 10 years from its rendition.

> The legislature had the power to except from this broad prohibition judgments rendered before the enactment of the law, but it did not do so. The fact that it failed to make any exception raises a strong presumption that it intended to make none, and brings any exception that a court might be disposed to make into the forbidden category of judicial legislation."

We agree, of course, that statutes are ordinarily to be construed as prospective in effect and not retroactive. But a statute of limitations does not result in "the assigning of a quality or effect to acts or conduct which they did not have or did not contemplate when they were performed," *Union P. R. Co. v. Laramie Stockyards Co.*, 231 U. S. 190, 199. It can never create a cause of action; it can only limit the future enforcement of rights which it does not otherwise affect. The rule of construction, therefore, does not have the force which it would have in a case where the statute, if applied retroactively, would affect changes in substantive rights, as in *United States F. & G. Co. v. Strothers Wells Co.*, 260 U. S. 306, "where the bond had already been executed, the work done, the respective rights of the parties settled, and the cause of action already in existence."

The Act itself indicates that their natural and literal effect should be given to the words of limitation.

We turn again to the language of Section 16 of the Act, that is:

> "The enforceable claims of or against Commodity Credit Corporation, a Delaware corporation, shall become the claims of or against, and may be enforced by or against, the Corporation; *Provided*, That nothing in this Act shall limit or extend any period of limitation otherwise applicable to such claims against the Corporation."

We think the proper inference from the express provision, that nothing in the Act should limit or extend any period of limitation otherwise applicable to claims against Commodity which became enforceable *against* the Corporation, is that the Act should limit or extend periods of limitation otherwise applicable to suits *by* the Corporation on claims of Commodity.

But the petitioner points out that there was no federal statute of limitations barring suits by Commodity, and that state statutes of limitations can not bar suits by the United States without the consent of Congress. It does not follow that suits by Commodity, or by the United States on claims of Commodity, would not be barred by a state statute. Indeed, although the question does not appear to have been determined by this Court, we suppose that Commodity's claims were subject to state statutes of limitations. Commodity was a Delaware corporation, which might sue or be sued. One of the ordinary incidents of the right to sue is that it must be exercised or otherwise be barred by limitations. Congress could, we assume, have granted Commodity immunity from the bar of any statute of limitations. In the absence of such a provision, the election to do business through a Delaware corporation should imply a consent to the application of a state statute to suits on its claims, though brought in the name of the United States, similar to the express consent to the application of section 4c to suits by the United States found in that section. See *United States v. Edgerton & Sons, Inc.*, 178 F. 2nd 763 (C.A.-2) holding that property of Commodity was subject to a warehouseman's lien. The Court there said, in part, at page 764:

> "When the United States conducts business transactions through a corporation, the tendency of recent de-

cisions is to hold that such corporation does not possess sovereign immunity unless expressly endowed with it. . . . Immunity from federal and state taxation was expressly conferred by the Act of March 8, 1938, 15 U.S.C.A. #713a-5. Thus the implication arises that the corporation possessed no other immunity, and this is fortified by the fact that in 1948 when it was succeeded by a corporation of the same name under a federal charter, immunity from liens was expressly reserved to the federal corporation."

Suits by Reconstruction Finance Corporation have been held subject to the defense of a state statute of limitations in

Reconstruction F. Corp. v. Foster Wheeler Corp., 70 F. S. 420;

Dorsey v. Reconstruction F. Corp., 101 F. S. 197, 199, aff. 197 F. 2nd 468 (C. A.-7).

Whether state statutes of limitations were applicable to claims of Commodity is, at least, doubtful. See Senate Report No. 1022 on the Act, U. S. Code Congressional Service, 1948, vol. 2, p. 2149, where in an analysis of the bill reference is made to "limitations * * * as to which the question of applicability has not been determined by the Supreme Court, such as the applicability of state and local statutes of limitations to Government corporations." Moreover, the use of the words "enforceable claims" indicates that Congress believed that claims by Commodity might become unenforceable as a result of the lapse of time.

In the light of the uncertainty as to the applicability of state statutes of limitations to claims by Commodity, we submit that the legislative history recited in the appellant's brief, pp. 26-32, indicates a purpose to settle the question by substituting a uniform period applicable in all states

on claims "by or against the Corporation". That period in the original Act was "four years after the right accrued on which suit is brought." As the petitioner concedes, there was no discussion of the meaning of the limitation provision during the debates on the floor. The statement quoted from the analysis of the bill that:

> "With respect to claims by the Corporation, the 4-year period of limitations will not begin to run on claims of the Delaware Corporation transferred to the Federal Corporation until June 30, 1948, the effective date of the charter"

does not appear to have been brought to the attention of the Congress prior to the passage of the Act. Senator Aiken asked "unanimous consent to have printed in the Record that is to come out after the adjournment an analysis of the long range farm bill and the Commodity Credit Corporation Charter bill as they were reported by the conference committee" (94 Cong. Rec. Part 12, 80th Congress, 2nd Session—Appendix, pages 4408-4409).

Obviously, such a statement cannot be considered by the Court as a gloss on the language of Congress, merely because it was printed in an Appendix to the Congressional Record.

Moreover, even though debates in Congress may be looked to as throwing light on the purposes of legislation and the mischief it was intended to correct, they are not to be used to determine the meaning of words, as cases cited by the appellant show.

Humphrey's Executor v. United States, 295 U. S. 602, 625.

> "While the general rule precludes the use of these debates to explain the meaning of the words of the

statute, they may be considered as throwing light upon its general purposes and the evils which it sought to remedy."

United States v. St. Paul, M. & M. R. Co., 247 U. S. 310, 318.

"The remarks of Mr. Lacey, and the amendment offered by him, in response to an objection urged by another member during the debate, were in the nature of a supplementary report of the committee; and as they related to matters of common knowledge they may very properly be taken into consideration as throwing light upon the meaning of the proviso; and not for the purpose of construing it contrary to its plain terms, but in order to remove any ambiguity by pointing out the subject matter of the amendment. This is but an application of the doctrine of the old law, the mischief, and the remedy."

The words here in question are and should be read in their natural and ordinary sense. There are no adequate reasons for giving them any other meaning.

2. THE COMPLAINT FAILS TO STATE A CLAIM AGAINST THE DEFENDANTS UPON WHICH RELIEF CAN BE GRANTED.

The complaint does not allege any failure on the part of the Handler or his agents to use due care in regard to the wool.

The complaint does allege, with a complete absence of any facts, a conclusion in the phraseology of the Handler's contract that the Handler did not provide proper storage or take such action as might be necessary to keep the wool in good condition.

Although the Federal Rules of Procedure do not require a prolix statement of facts, it would still seem that some notice of the factual basis of the claim is required.

Sheridan-Wyoming Coal Co. v. Krug, 168 F. (2d) 557;

Zimmerman v. National Dairy Products Corp., 30 F. Supp. 438.

Moreover, a Handler might fail to provide proper storage and fail to take necessary steps to keep the wool in good condition although acting reasonably and with due care.

Yet the Handler's Agreement provides (par. 15(b), R. 16) that "Commodity shall indemnify and save the Handler * * * harmless from any loss or damage to the wool after it is placed in the warehouse * * * provided such loss or damage does not result from the failure of the Handler or his agents to use due care in regard to the wool."

It would seem that an allegation of failure to exercise due care on the part of this defendant or his agents is, therefore, essential to state a claim for relief against the Handler and his sureties.

The complaint does not allege that any loss or injury to the wool was caused by the failure of the warehouseman to exercise such care in regard to the wool as a reasonably careful owner of similar goods would exercise.

Massachusetts General Laws (Ter. Ed.) C. 105, sec. 27 provides:

> "A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise; but not, in

the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care."

It would seem, therefore, that an allegation of failure to exercise such care is essential to state a claim against this defendant.

Central States Grain Co-Operative v. Nashville W & E Corp., 48 F. (2d) 138, 140:

"Neither negligence nor wilfulness being alleged, we may assume that the warehouse is not liable to appellant for the damage done to appellant's grain by reason of the fire."

WHEREFORE, the Respondents respectfully submit that the judgment below should be affirmed.

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Attorney for Respondents.